

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86470434
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86470434/large
LITERAL ELEMENT	BISCUIT BITES
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
Applicant's argument and exhibits are attached as .pdf and .avi files.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_388819142-20160107163557152118_.BITES - Client s Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0005.JPG
ORIGINAL PDF FILE	evi_388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF	

FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0007.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0008.JPG
ORIGINAL PDF FILE	evi_1-388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0009.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0010.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0011.JPG
ATTACHMENT	APPLICANT-SUPPLIED FILE (SOUND/MOTION)
ORIGINAL PDF FILE	evi_2-388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0012.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0013.JPG
ORIGINAL PDF FILE	evi_3-388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0014.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0015.JPG
ORIGINAL PDF FILE	evi_388819142-20160107163557152118_. Exhibit B-5.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0016.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0017.JPG
ORIGINAL PDF FILE	evi_388819142-20160107163557152118_. Exhibit B-6.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0018.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0019.JPG
ORIGINAL PDF FILE	evi_4-388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0020.JPG

(3 pages)	
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0021.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0022.JPG
ORIGINAL PDF FILE	evi_5-388819142-20160107163557152118_. - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0023.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\864\704\86470434\xml8\RFR0024.JPG
DESCRIPTION OF EVIDENCE FILE	the Applicant's Request for Reconsideration; Exhibit A consisting of an online recipe; Exhibit B-1 consisting of the declaration of Veronica T. Thomas; Exhibit B-2 consisting of Applicant's television advertisement; Exhibits B-3 through B-8 consisting of Applicant's national print advertisements; Exhibit C-1 consisting of the declaration of Jerrod Eaton; and Exhibit C-2 consisting of documentation showing product sales
SIGNATURE SECTION	
RESPONSE SIGNATURE	/sarahannekeefe/
SIGNATORY'S NAME	Sarah Anne Keefe
SIGNATORY'S POSITION	Attorney of record, North Carolina bar member
SIGNATORY'S PHONE NUMBER	(919) 484-2327
DATE SIGNED	01/07/2016
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jan 07 18:18:50 EST 2016
TEAS STAMP	USPTO/RFR-XX.XX.XXX.XX-20 160107181850829513-864704 34-550f4848f6cbafdbcfef91 9e74176f9451d6ca1ac7cc7ec 462dc6dff77688ac5b72-N/A- N/A-20160107163557152118

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **86470434** BISCUIT BITES(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86470434/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant's argument and exhibits are attached as .pdf and .avi files.

EVIDENCE

Evidence in the nature of the Applicant's Request for Reconsideration; Exhibit A consisting of an online recipe; Exhibit B-1 consisting of the declaration of Veronica T. Thomas; Exhibit B-2 consisting of Applicant's television advertisement; Exhibits B-3 through B-8 consisting of Applicant's national print advertisements; Exhibit C-1 consisting of the declaration of Jerrod Eaton; and Exhibit C-2 consisting of documentation showing product sales has been attached.

Original PDF file:

[evi_388819142-20160107163557152118_ - BITES - Client_s Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

Original PDF file:

[evi_388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_1-388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Attachment:

APPLICANT-SUPPLIED FILE (SOUND/MOTION)

Original PDF file:

[evi_2-388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_3-388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_388819142-20160107163557152118_ Exhibit B-5.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_388819142-20160107163557152118_ Exhibit B-6.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

Original PDF file:

[evi_4-388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

Original PDF file:

[evi_5-388819142-20160107163557152118_ - BISCUIT BITES - Request for Reconsideration - No. 86470434.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /sarahannekeefe/ Date: 01/07/2016

Signatory's Name: Sarah Anne Keefe

Signatory's Position: Attorney of record, North Carolina bar member

Signatory's Phone Number: (919) 484-2327

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to

withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86470434

Internet Transmission Date: Thu Jan 07 18:18:50 EST 2016

TEAS Stamp: USPTO/RFR-XX.XX.XXX.XX-20160107181850829

513-86470434-550f4848f6cbafdbcfef919e741

76f9451d6ca1ac7cc7ec462dc6dff77688ac5b72

-N/A-N/A-20160107163557152118

Request for Reconsideration

Pursuant to 37 C.F.R. § 2.64(b) and T.M.E.P. § 715.03, Applicant requests reconsideration of the Examining Attorney's final refusal, dated July 7, 2015, to register the mark BISCUIT BITES ("Applicant's Mark") in connection with "desserts, namely deep-fried balls of dough, coated with glaze and/or sugar in a variety of flavors" (Applicant's Goods). The Examiner's final refusal is based upon Section 2(e)(1) of the Lanham Act, namely, that the Examiner concludes that Applicant's Mark is merely descriptive of Applicant's Goods. Further, the Examiner has indicated that Applicant's Mark is "generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for applicant's goods." Office Action dated July 7, 2015. This Request for Reconsideration ("Request") addresses both the merely descriptive and generic claims made by the Examiner. Applicant further incorporates by reference its Response to Office Action dated June 18, 2015 ("Applicant's Response").

Applicant's Mark is Not Generic.

Applicant respectfully submits that the Examiner has failed to meet its burden of proof with respect to the claim that Applicant's Mark is generic and has applied the wrong test to determine whether Applicant's Mark is generic.

Burden. The determination of whether a mark is generic is a question of fact, which the Examining Attorney must prove by clear evidence. *See In re Hotels.com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009); *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987); *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1571, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The evidence relied upon by the Examiner shows, at most, that Applicant's Mark, may be considered descriptive. There is no evidence that consumers would use or refer to Applicant's Mark as the common commercial name for Applicant's Goods.

Test. Applicant submits that the terms BISCUIT BITES, presented together, are not generic for Applicant's Goods. The test for determining whether a mark is generic for Applicant's Goods is two-fold: (1) identification of the genus of Applicant's Goods and (2) assessing whether the public understands the mark, *as a whole*, to refer to that genus of goods. *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 114 U.S.P.Q.2d 1827, 1830-31 (Fed. Cir. 2015) (reversing a refusal to register the term PRETZEL CRISPS). It is incorrect to short-cut this test by analyzing only the meaning of the individual words that make up a trademark. *Id.* Rather, the meaning of a mark *as whole* must be analyzed to make such a determination. *Id.* This point was made clear in *Princeton Vanguard*, where the Federal Circuit reversed the Trademark Trial and Appeal Board's finding that the mark PRETZEL CRISP was generic for pretzel crackers. In that case, the Board had based its conclusions on evidence that the public understood the word "Pretzel" as the common name for pretzels and pretzel snacks and that the public understood the word "Crisp" as a common name for crackers. *Id.* at 1830-33. The Federal Circuit explained that the Board should have analyzed the evidence related to the public's perception of the entire PRETZEL CRISP mark, rather than merely its constituent parts, and therefore found reversible error in the Board's genericness determination. *Id.* At 1832-33.

Applicant respectfully submits that the Examining Attorney has inadvertently used the same short-cut test for genericness that the Federal Circuit denounced and reversed in *Princeton Vanguard* to conclude that the terms BISCUIT BITES in Applicant's Mark are generic. The Examining Attorney states in the July 7, 2015 Office Action that the "wording of the applied-for mark, BISCUIT BITES, merely describes a small quick bread made of dough that has been rolled out or cut in an amount in the range of a mouthful." It is clear from this statement that the Examining Attorney has relied on the definitions of each of the constituent terms in Applicant's Mark individually to conclude that the mark, as a whole, is generic. It is clear from the Federal Circuit's reversal, that the Examiner must instead consider the meaning to the public of Applicant's Mark in its entirety.

Further, the Examining Attorney's description of Applicant's Goods, through use of such definitions, is not applicable nor accurate. While the Examining Attorney has provided definitions for the terms BISCUIT and BITES, those terms definitions do accurately describe or identify Applicant's Goods, which are desserts, namely deep-fried ball of dough, sometimes including cookie pieces, coated with glaze and/or sugar in a variety of flavors. The fact that the definitions of the terms BISCUIT BITES, as provided by the Examiner, do not actually identify Applicant's Goods is further evidence that the mark is not generic.

The Examining Attorney has primarily relied upon online recipes using the terms "BISCUIT BITES" in the two Office Actions in an attempt to show that Applicant's Mark is generic. As previously addressed in Applicant's prior Response, these recipes are for goods that are substantially different from Applicant's Goods. In addition, these recipes use the terms "Biscuit Bites" as a trademark or as descriptive terms, but not as common generic terms. Accordingly, while these recipes may support a finding that Applicant's Mark is descriptive, such evidence certainly does not prove by clear evidence that Applicant's Mark is generic. Additionally, while the Examining Attorney cited several recipes, he failed to include an online recipe titled "Papa Jer's Oreo Biscuit Bites," which describes its recipe as "a copycat of Church's fried chicken restaurant's Oreo Biscuit Bites". Applicant submits that this evidence shows that the relevant public uses the term BISCUIT BITES in reference to Applicant's Goods, as the author of this recipe included Applicant's name as well as capitalizing the terms BISCUIT BITES which signifies use as a mark (Attached as "Exhibit A").

The Examining Attorney has failed to meet his burden of establishing by clear evidence that the relevant consumers recognize Applicant's Mark as primarily referring to Applicant's Goods. While the Examining Attorney has submitted some examples of third-party use of the terms "Biscuit Bites" in connection with other food products in a descriptive manner, there is no evidence showing that Applicant's Mark is the common, generic name for Applicant's Goods. See *Munro and Associates, Inc. v. Huthwaite Group, L.L.C.*, 2006 WL 1329155, at *4 (E.D. Mich. 2006) (examples of third-party use "may represent descriptive fair use, rather than an acknowledgment that the term 'Lean Design' is generic [for a minimalist approach to design practices], they do not constitute definitive evidence that the term 'Lean Design' is generic."). In particular, the Examining Attorney has not provided any evidence establishing that relevant consumers or the third parties who have used the term "Biscuit Bites" understand these terms, as combined, to be generic. At most, the submissions relied upon by the Examining Attorney show that the terms "Biscuit Bites," when combined, are at most descriptive, and certainly not generic.

Furthermore, Applicant's extensive national advertising and significant sales success show that Applicant's Mark is capable of serving as a source-identifier for Applicant's Goods. In fact, the Examining Attorney included evidence in the Office Action dated July 7, 2015, of an article stating that the Applicant served nearly 2 million of Applicant's Goods during the introductory phase of the product. Finally, "any doubts raised by the lack of evidence must be resolved in applicant's favor." *In Re Sei Mfg., Inc.*, 78648865, 2011 WL 6780734 (TTAB Dec. 5, 2011) (reversing the refusal to register the mark HANGBOARD for "winter sports and recreation equipment, namely, snowboards, sleds" on the Supplemental Register despite numerous online references to "Hangboard" relating to winter sports).

Additionally, none of Applicant's actual competitors are using the term "Biscuit Bites" to refer to their dessert products. The Examining Attorney has not pointed to a single actual competitor in the marketplace using the term "Biscuit Bites" to describe a competing dessert product. Indeed, none of the references to "Biscuit Bites" relied upon by the Examining Attorney are uses by competitors of Applicant, nor are any of these references for competing products to Applicant's Goods. Therefore, the fact that competitors are using different terms than Applicant's Mark to refer to their biscuit products further shows that Applicant's Mark is not generic.

Applicant's Mark has Acquired Distinctiveness.

Applicant's Mark is clearly not generic. Further, even if Applicant's Mark is viewed as descriptive or merely descriptive, Applicant's Mark has acquired distinctiveness so as to be now be entitled to registration on the Principal Register. A merely descriptive mark is eligible for registration on the Principal Register if it has acquired distinctiveness, that is it "has become distinctive as applied to the applicant's good or services in commerce." 15 U.S.C. § 1052(f). Even if Applicant's Mark may have been considered descriptive of Applicant's Goods, it is clearly now distinguishing Applicant's Goods and serving as a source identifier. Extensive advertising of a mark may be used to show that a mark has had significant exposure to the relevant public, increasing the likelihood that the public will recognize the mark as an indicator of source. See J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* §15.52 (4th ed., 2001). Applicant's advertising for Applicant's BISCUIT BITES dessert products has included an extensive advertising campaign involving online advertising, point of sale promotions and in-store advertisements, as well as a national television commercial.

Applicant submits the attached declaration of Veronica T. Thomas to further show that Applicant's Mark has acquired distinctiveness ("Exhibit B-1"), as well as supporting evidence ("Exhibit B-2 – B-6"). The declaration and supporting evidence confirms the significant advertising and sales success associated with Applicant's Mark and specifically describes the extent of the use and promotion of Applicant's Mark in connection with the online, television, and in-store advertising identified above. As a result of Applicant's extensive advertising and promotion of its mark and goods, Applicant's Mark is capable of distinguishing Applicant's Goods. Therefore, Applicant's Mark serves as a trademark and is entitled to registration on the Principal Register.

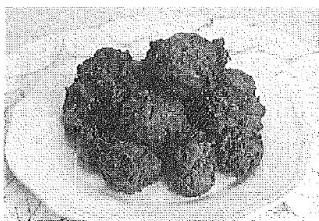
Exhibit B-1 supports the following evidence of Applicant's widespread advertising and use of Applicant's Mark in connection with Applicant's Goods:

1. Exhibit B-2 – national television advertisement featuring Applicant's Mark in connection with the promotion of Applicant's Goods.
2. Exhibit B-3– B-6 – national print advertisements featuring Applicant's Mark in connection with the promotion of Applicant's Goods.

Applicant and its licensees sell biscuits at its CHURCH'S and TEXAS CHICKEN brand restaurants. Since introduction of Applicant's BISCUIT BITES dessert products, sales of biscuits have not been impacted by sales of BISCUIT BITES products. BISCUIT BITES products are not substitutes for biscuits nor do customers order BISCUIT BITES instead of biscuits or vice versa. Applicant's BISCUIT BITES products are viewed as a separate and distinct menu item unrelated to biscuits. Attached hereto as Exhibits C-1 and C-2 are the Declaration of Jerrold Eaton and supporting documentation, respectively, showing that sales of BISCUIT BITES products do not impact sales of biscuits, as the products are not substitutes of one another and are viewed as separate categories of food.

Because of Applicant's extensive advertising and sales, Applicant's Mark has come to be recognized as a source indicator and does distinguish Applicant's Goods. In addition, because there is no clear evidence in the record establishing that relevant consumers recognize Applicant's Mark as the common name for Applicant's Goods, Applicant's Mark is not generic. Having responded to the issues raised by the Examining Attorney, Applicant respectfully submits that the application is now in condition for passage to publication, which action is respectfully requested. If the Examining Attorney should have any further questions, please do not hesitate to contact us.

EXHIBIT A



by Jerry Stolarski
in Desserts, Fancy

Web Page

<http://tastykitchen.com/recipes/desserts/papa-jere28099s-oreo-biscuit-bites/>

Papa Jer's Oreo Biscuit Bites

Prep: 1 hr
Cook: 3 mins

Level: Intermediate
Serves: 28

Description

A copycat of Church's fried chicken restaurant's Oreo Biscuit Bites.

Ingredients

- FOR THE BISCUITS:
- 12 Regular Oreo Cookies (not The Double Stuff)
- 1 cup All-purpose Flour
- 1/8 teaspoons Baking Soda
- 1/2 Tablespoons Baking Powder (use Non Aluminum)
- 1/2 teaspoons Salt (kosher If You Wish)
- 2 Tablespoons Sugar
- 3 Tablespoons Cold Butter (cut In Small Cubes)
- 1/2 cups Cold Buttermilk
- Corn Oil, Enough For About 2-3 Inches In Your Frying Pot
- FOR THE GLAZE:
- 1/4 cups Whole Milk
- 1 teaspoon Vanilla Extract
- 2 cups Confectioners Sugar

Preparation

For the biscuits:

In a food processor, add the Oreo cookies and pulse until you have a fairly fine crumb.

In a large bowl whisk together flour, baking soda, baking powder, salt and sugar.

Add the flour mixture and cubed butter into the food processor with the Oreo crumbs and pulse till the cubes of butter are reduced down and the mixture looks like cornmeal.

Remove from food processor into a large bowl, add buttermilk and mix till well blended (if the batter is still too crumbly add more buttermilk a tablespoon at a time) and the dough is stiff enough to form into balls.

Roll dough into about 1 inch balls and place on a cookie sheet lined with parchment paper. Place cookie sheet in the refrigerator for about 20 minutes.

While the dough is chilling, bring a pot with about 2 inches of corn oil to 360 F. While the oil is heating make the glaze (see below).

Now that the oil is hot, bring out the dough balls. Carefully put a few into the hot oil and fry for about 2 1/2 – 3 minutes. Fry them in small enough batches they don't crowd and stick together. Depending on the amount of liquid used in the making of the dough, you may have to reduce or extend the cooking time. When done, remove them to a cooling rack with paper towels below and let them drain. Repeat frying the rest.

When drained well dip the biscuit bites one at a time in the glaze and place on another cooling rack to allow the glaze to cool and set.

For the glazing:

Combine milk and vanilla in a medium saucepan and heat over low heat until warm. Sift confectioners' sugar into milk mixture. Whisk slowly, until well combined. Remove the glaze from the heat and set over a bowl of warm water.

Enjoy, Papa Jer.

EXHIBIT B-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cajun Funding Corp.

APPLICATION SERIAL NO.: 86/470,434

MARK: BISCUIT BITES

DECLARATION OF VERONICA T. THOMAS PURSUANT TO 37 C.F.R. §2.20


The undersigned declares:

1. That she is the Senior Manager of Intellectual Property, Litigation and External Affairs for Cajun Operating Company, a parent company of Cajun Funding Corp., DBA Church's Chicken, the Applicant in the above-identified trademark application.
2. That this Declaration is made in support of Applicant's above-identified application for the mark BISCUIT BITES.
3. Attached as Exhibits B-2 – B-6 are true and correct copies of advertisements and promotions published and used in commerce by Applicant and/or its franchisees. Such materials promote desserts marketed under Applicant's Mark, namely deep-fried balls of dough, coated with glaze and/or sugar in a variety of flavors ("Applicant's Goods").
4. Sales. Applicant's sales numbers for Applicant's Goods reflect a high degree of recognition for Applicant's Mark. To date, Applicant has sold in excess of \$2.4 million of Applicant's Goods bearing Applicant's Mark.
5. Advertising. Applicant's Exhibits B-2 - B-6 evidences the significant advertising associated with Applicant's Mark and describes the extent of use and promotion of Applicant's Mark in connection with online, television, and in-store advertising. Applicant has spent considerable time and money in advertising, marketing and

promoting Applicant's Mark in connection with Applicant's Goods. Applicant has spent in excess of \$2 million on promoting Applicant's Goods and Applicant's Mark.

6. As a result of the advertising and promotion and sale of Applicant's Goods under Applicant's Mark, Applicant's Mark is or has become distinctive of Applicant's goods. Applicant's Mark is associated with Applicant and Applicant's customers associate Applicant's Mark uniquely with Applicant's Goods.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine, imprisonment or both under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any resulting registration, declares that the facts set forth in this declaration are true; all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.


Veronica T. Thomas
Senior Manager, IP/Litigation/External Affairs

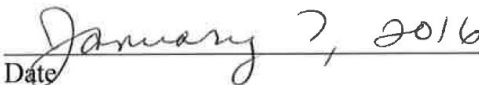

Date

EXHIBIT B-3



CHOCOLATE CHIP BISCUIT BITES

Made with Nestlé® Toll House® Morsels

5 for 99¢

20 for \$2⁹⁹

© 2015 Eagle Branding Company under license to Eagle Branding Corp. BISKUITS and BISCUITS are registered trademarks of Unilever Food Solutions LLC. Biscuits, Biscuit and Biscuit are trademarks of Unilever Food Solutions LLC. Eagle Branding Company and all other marks are trademarks of Unilever Food Solutions LLC.

CHOCOLATE

EXHIBIT B-4

Drizzled in **HOLIDAY SPIRIT.**



NEW!

OREO *Red Velvet*
BISCUIT BITES

Made with OREO® cookie pieces

5 for 99¢ 20 for \$2.99

© 2015 Capri Operating Company, under license to Capri Funding Corp.

OREO and the OREO logo design are registered trademarks of Mondelez International group, used under license.

CHQ-SB1605

EXHIBIT B-5



OREO and the Oreo Wafer Design are registered trademarks of Mondelez International group, used under license.

Drizzled in **HOLIDAY SPIRIT.**

NEW!

OREO *Red Velvet*
BISCUIT BITES

Made with OREO® cookie pieces

5 for 99¢ 20 for \$2.99

©2015 Cajun Operating Company, under license by Cajun Funding Corp.

CHC-ALT2454

EXHIBIT B-6



OREO

**BISCUIT
BITES™**

5 *for*

20 *for*

EXHIBIT C-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Cajun Funding Corp.

APPLICATION SERIAL NO.: 86/470,434

MARK: BISCUIT BITES

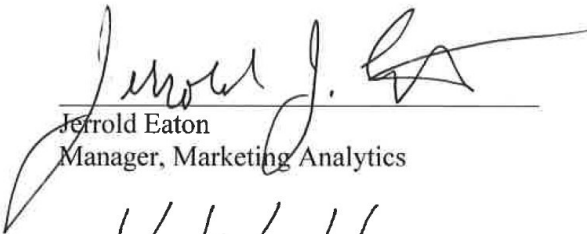
DECLARATION OF JERROLD EATON PURSUANT TO 37 C.F.R. §2.20

The undersigned declares:

1. That he is the Manager, Marketing Analytics of Cajun Operating Company, a parent company of Cajun Funding Corp., DBA Church's Chicken, the Applicant in the above-identified trademark application.
2. That this Declaration is made in support of Applicant's above-identified application for the mark BISCUIT BITES.
3. He is familiar with Applicant, Applicant's Mark and Applicant's customers. Applicant has researched and studied its customers' purchase of Applicant's BISCUIT BITES products and he is familiar with such research and study. The research and study have shown that Applicant's customers do not substitute BISCUIT BITES products for biscuits, and vice versa. Following the introduction of the BISCUIT BITES products, the stores saw no material decrease in sales of biscuit products, which indicates customers do not order BISCUIT BITES dessert products in lieu of biscuits and vice versa and that BISCUIT BITES products are viewed as a separate and distinct item from traditional biscuits.
4. He is familiar with the Applicant's Exhibit C-2 filed January 7, 2016. This is a chart he prepared to reflect the results of the study and research described in Section 3 above.

Exhibit C-2 clearly depicts BISCUIT BITES dessert products exist in the marketplace as a separate product category from regular biscuits. The blue bars in the graph represent the sales of regular biscuit products, while the red bars represent the sales of BISCUIT BITES products following introduction. The chart shows that Applicant's customers do not substitute BISCUIT BITES products for biscuits, and vice versa. Following the introduction of the BISCUIT BITES products, the stores saw no material decrease in sales of biscuit products, which indicates customers do not order BISCUIT BITES in lieu of biscuits and vice versa and that these are distinct product categories.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine, imprisonment or both under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any resulting registration, declares that the facts set forth in this declaration are true; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.



Jerrold Eaton
Manager, Marketing Analytics
1/6/16

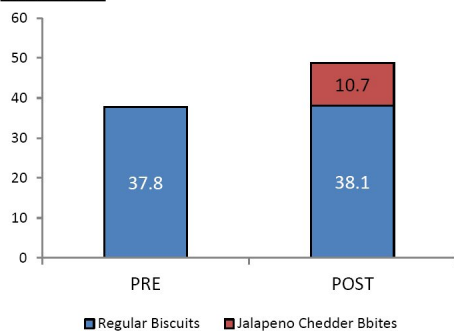
Date

EXHIBIT C-2

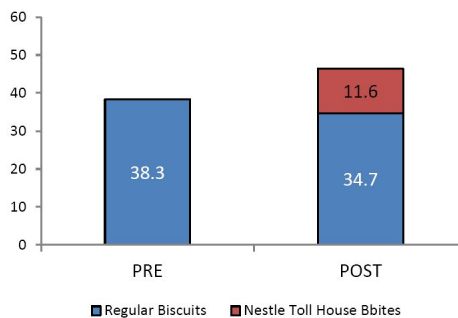
12 Weeks Pre Period Vs. Biscuit and LTO Biscuit Bites Ancillary Servings/Restaurant/Day



Market Tests

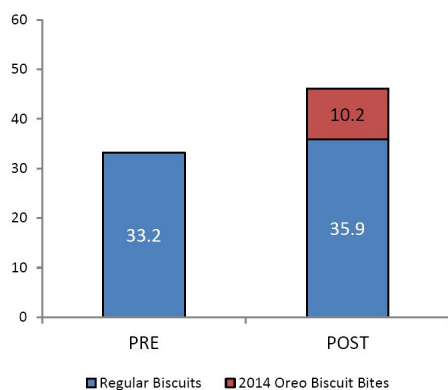


McAllen, TX 6/1 – 6/28/2015

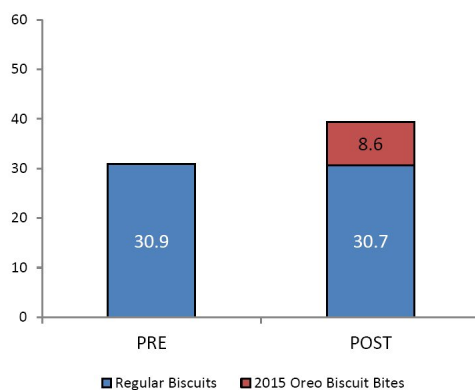


Miami, FL 6/1 – 6/28/2015

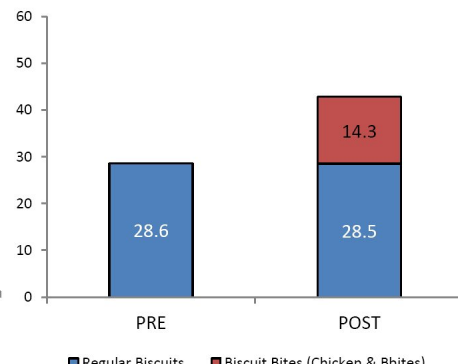
National Promotions



12/1 – 12/28/2014



3/30 – 5/31/2015



8/31 – 9/27/2015